

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4327 of 1983

Date of decision: 10-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Versus

ADDRESS NOT WRITTEN

Appearance:

MS VASUBEN P SHAH for Petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10-12-1996

CAV JUDGEMENT

The petitioner, a cooperative housing society has filed this writ petition challenging the order of the respondent dated 25th July, 1983 under which the respondent has cancelled the permission to develop the land of the petitioner bearing blocks No.65 and 66.

2. The petitioner purchased the land bearing Survey No.252/319 admeasuring 1 acre 39 gunthas through its promoter, one Rajan A. Prasad. This land is situated

within the municipal limits of Kalol Nagar Palika. The holder of the said land applied for permission for sale of the said land under section 93 and 63 of the Bombay Tenancy and Agricultural Land Act, 1948. The Collector, Mehsana, vide his order dated 26th November, 1981 granted permission to the holder of the said land under the provisions of the aforesaid Act. Rs.51,134.50 ps was required to be paid to the Government by way of premium for getting permission to sell the aforesaid agricultural land for nonagricultural purpose under the provisions of the said Act. The State Government declared the Urban Development Area comprising of Ahmedabad, Mehsana and Kheda districts under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 and appointed the respondent as the competent authority for the said area under the said Act. In pursuance of the powers conferred upon it under the said Act, the respondent prepared draft development plan for the area comprising partly in Ahmedabad District, Mehsana District and Kheda District. This draft plan was published on 23rd July, 1981. In the said draft development plan the respondent had proposed road passing through survey Nos.175, 178 and 181. The land of survey No.177 was occupied by Ankur Cooperative Society on which some tenements were constructed. Survey No.181 was occupied by Lions Club for its housing society.

3. The petitioner submitted application to the respondent for grant of permission for developing the land. This permission was sought as required under section 27 of the Town Planning and Urban Development Act, 1976 ("T.P.Act"). Rs. 1180.50 ps was also deposited as the necessary fees. Rs.5,000/- was paid towards development charges as required under section 26 of the T.P.Act. Respondent under its order dated 14-2-1982 granted permission to the petitioner to develop the land as per the plan submitted with the application. After grant of the aforesaid permission to develop the land, the petitioner applied under section 65 of the Bombay Land Revenue Code to the Collector on 9-2-1982 for grant of nonagricultural permission. The Collector, under order dated 13-4-1982 granted N.A. permission to the petitioner. After completing all these formalities a registered sale deed dated 26th April, 1982 in respect of the land in question was executed by the holder thereof in favour of the petitioner. Rs.51,134/- has also been paid as fee for converting the land from new tenure to old tenure and for obtaining permission to sell the land under the Bombay Tenancy and Agricultural Land Act, 1948 ("Tenancy Act").

4. The petitioner submitted application to the Kalol Municipality for grant of permission for construction of residential premises on the land. Kalol Municipality under its order dated 1-5-1982 granted permission for putting up construction of residential tenements on the land by the petitioner. As per the plan sanctioned by the respondent in all 66 plots were to be made on the said land including one common plot. The petitioner society took 65 members and started construction on the said land. The petitioner has stated in the petition that the construction of the tenements had reached the stage of lintel level.

5. The respondent, at the instance of Ankur Cooperative Housing Society, intended to modify the draft plan by shifting the said road proposed to be passing through the survey numbers including survey No.177 of the said society and the petitioner's land by making it curvature. The petitioner filed rough sketch in which it has shown original road proposed by respondent, new proposed altered road, coloured black and yellow respectively. The petitioner has also given out the new suggested road and that has been shown in green colour. When the petitioner came to know that the respondent had proposed the road through the petitioner's land partly affecting the petitioner's land, lodged objections vide letter dated 29th October, 1982. In the petition the petitioner has inter alia submitted that it has already granted permission to develop the said land on 4-2-1982. It has also obtained N.A. permission from Mehsana District Panchayat on 13-4-1982 and it has put up construction up to lintel level as per the plan sanctioned by the respondent and the permission granted by Kalol Municipality. The respondent under its order dated 1-2-1982 proposed to cancel the permission to develop the land without giving any hearing to the petitioner society. On 4-12-1982 panchnama was prepared by the respondent for noting down the actual position of construction of block No.65 and 66 wherein it was mentioned that the construction up to ceiling level was made on the said plot on that day. Letter dated 1-12-1982 has been sent to the original holder of the land but that person has informed the petitioner about the same and the petitioner has suggested another alternate road during the course of argument to the respondent. The petitioner wanted to submit further necessary particulars. As sufficient time was not there at its disposal the petitioner made request for postponement of the hearing vide its letter dated 14-12-1982. On 18-12-1982 the petitioner filed reply before the respondent to postpone the proposed road which

affects the petitioners plots. Under order dated 26-7-1983 the respondent has cancelled the permission to develop land granted in connection with block No.65 and 66 of the petitioner's land. The petitioner stated in the special civil application that the new proposed altered road also affected the land belonging to Kalol Municipality and it has therefore raised objection by letter dated 15-11-1982. One of the objection raised by the Municipality was that the new proposed altered road is very much in zigzag. The petitioner has therefore approached this court by way of this special civil application.

6. The respondent has not filed reply to the writ petition. On 16-12-1983 this special civil application had come up for admission hearing before this court. This court made the following order:

"Rule. There will be interim relief in terms of paragraph 16(C) subject to the condition that the petitioner society will file an undertaking to the court that in case they do not finally succeed in the petition they would not make any claim on the basis of any construction that is made subsequent to the stay this date. The undertaking to be filed within a week."

The prayer made in para 16(C) of the petition reads as under:

"Be pleased to grant interim stay staying the operation and implementation of the impugned order dated 25-7-1983 pending hearing and final disposal of this petition and restraining the respondent from interfering with the construction work being carried on by the petitioner on the said land in connection with block Nos.65 and 66, pending hearing and final disposal of this petition."

7. It is not in dispute between the parties that in pursuance of the interim relief which has been granted by this court construction of tenements has been completed in block Nos.65 and 66. It is also not in dispute that number of allottees of the tenements which have been constructed in blocks No.65 and 66 in pursuance of the interim relief which has been granted by this court have occupied the same and they are residing therein.

8. The counsel for the petitioner submitted that the allottees of the tenements of blocks No.65 and 66 are lower income group persons. These are very small tenements consisting of one room and these persons are there for the last many years. The counsel for the

petitioner further submitted that the permission to develop the land in connection with blocks No.65 and 66 of the petitioner has been cancelled as the draft plan has been modified. The counsel for the petitioner submitted that this has been done at the instance of influential persons. The original proposed road was passing through the land comprising of survey Nos.177 and 181. The occupiers of land of survey No.177 (Ankur Cooperative Housing Society) and Survey No.181 (Lions Club) have exercised their influence which has resulted in cancellation of the permission to develop the land of block Nos. 65 and 66 of the petitioner's land. The new proposed road passing through these two blocks. The counsel for the petitioner, carrying further the submissions, urged that from annexure-D it is clearly borne out that to save the land of survey No.177 and 181 new suggested road has been proposed. The petitioner has also given a new suggested road proposal which will not affect the petitioner's land as well as the land comprising survey No.177 and 181. Ankur Cooperative Housing Society on its land of survey No.177 made construction of tenements and to save that construction it has brought pressure upon the respondent to alter the proposed road under the original draft plan. In case the intention was to save the construction of tenements on the land of survey No.177 and to extend favour to Lions Club, then the petitioner's case stood on the same footing. This court has protected the petitioner by granting interim relief and permitted the petitioner Society to complete the construction of tenements on blocks No.65 and 66. The petitioner has bona fide proceeded with the construction of the tenements in blocks No.65 and 66 in pursuance of the interim order of this court and the tenements have already been occupied by the members of the society and they are residing there for all these 13 years. Those members have spent money in construction and they are residing therein with all the hopes that the construction will not be demolished as the construction has been made under the order made by this Court. The members of the society who have been given the tenements in blocks No.65 and 66 were under the solemn guarantee after the interim relief granted by this court that the construction made will not be demolished in future.

9. On the other hand learned counsel for the respondent contended that he is not in a position to controvert the factual aspect of the matter. He is not in a position to say whether on the land of survey No.177 and survey No.181 construction of tenements has been made or not. However Mr. Jani contended that the interim

relief granted by this court is not the final verdict in the matter. In case the petitioner is not able to make out a case for intervention of this court then the interim relief will merge in the final order of this court and the construction which has been made has to be demolished. Interim relief will not decide the final rights of the parties in the matter.

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

The petitioner has not impleaded the holder of the land bearing survey Nos.177 and 181. Even from annexure-D which has been filed by the petitioner I could not get that the original road proposed by the respondent in the draft plan was passing through land of survey No.181. The original proposed road which is shown in red colour in annexure-D is passing through survey Nos.173, 175, 176, 177, 178, 182 etc., Otherwise also in absence of those persons I do not consider it to be proper to decide the matter in controversy raised against them which may adversely affect them. Such a course, if adopted, will certainly be against the basic principles of natural justice. But at the same time I cannot ignore the fact that this court has permitted specifically the construction on blocks No.65 and 66 of the land of the petitioner. I find sufficient justification in the contention raised by the learned counsel for the petitioner that the construction has been made after grant of interim relief by this court. The promoter of the society may not be the person affected, and the persons affected may be, as stated by the counsel for the petitioner, the low income group persons to whom tenements constructed in blocks No.65 and 66 have been given on construction thereof after interim order of this court. Those persons are certainly a class who got tenements under bona fide belief and solemn affirmation that those will not be demolished at a later stage. I do not find any merit in the contention of the counsel for the petitioner that the proposed draft plan could not have been modified by the respondent. The counsel for the petitioner is unable to bring to the notice of the court any provision from the Town Planning Act which prohibits or bars the authority of the respondent to make amendment in the earlier proposed draft plan. The only safe guard to be taken in making amendment of the proposed plan is that the affected person should be given notice and opportunity of hearing. It is not in dispute that the petitioner has been given full opportunity of hearing. The petitioner submitted objections also. No grievance could have been made by the petitioner that the

aforesaid procedure which is required to be followed has not been followed in the present case by the respondent before making the impugned order. Naturally when the originally proposed road was sought to be altered then consequential order would have been cancellation of the permission which was granted to the petitioner to develop the land.

11. It is necessary to notice that the permission to develop the land has been cancelled in connection with blocks No.65 and 66 of the land of the petitioner. On the land of survey numbers through which the originally proposed road was shown in the draft plan construction would have been made. The only difference between the other persons and the petitioner is that the former class has raised construction earlier to the new proposed altered road and the latter has raised the construction in blocks No.65 and 66 after the new proposed alteration of the road, but under the interim relief granted by this court. In case respondent considered it necessary to deviate from the originally proposed road to save the construction which has been made in survey No.177 or to permit construction in survey No.181 to the fullest extent, then the petitioner is also a person who has already raised construction in the land under the order of the highest court of the State. In view of the subsequent development, what I consider proper is that all the persons should be considered alike and the respondent should have given fresh thought to the matter, whether still in the changed circumstances it would still like to construct the road as per its revised new proposed altered plan or it would like to stick to the original proposed road in the draft plan. In both the cases demolition of construction has to be there. The broader question for consideration of the respondent is to see that third proposal of the road may be there which may not affect any of the construction either made prior to the second proposal or the construction made in pursuance of the interim order of this court. It is not in dispute that the road as originally proposed or proposed in the altered form has not been constructed so far. Though I do not find any illegality in the action of the respondent to propose alteration in the draft plan and to cancel the permission granted to the petitioner to develop the land in connection with blocks No.65 and 66, the respondent has to consider the matter afresh in the light of the observations made above in this judgment as well as keeping in view the subsequent developments which have taken place, may be by virtue of the interim order of this court.

12. The respondent is directed to take afresh appropriate decision in the matter after giving an opportunity of hearing to the concerned societies or individuals. Whatever decision to be taken by the respondent shall be taken within a period of three months from the date of receipt of certified copy of this order. The counsel for the petitioner is directed to send certified copy of this order to the respondent after obtaining the same from the registry on payment of necessary charges. The respondent is further directed to produce on record of this case the decision which is taken by it in the matter. The writ petition is disposed of with the aforesaid observations and directions. Rule discharged accordingly. No order as to costs.

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